

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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Federal Communications Commission
Office of the Secretary**

AT&T Inc. Petition for Waiver of)	WCB/Pricing File No. 07-08
Section 61.42(g) of the Commission's)	DA 07-2043
Rules)	

**OPPOSITION OF AT&T INC. TO APPLICATION FOR REVIEW FILED BY THE NEW JERSEY
PUBLIC ADVOCATE DIVISION OF RATE COUNSEL**

AT&T Inc. (AT&T), on behalf of its incumbent local exchange affiliates, files this opposition to the Application for Review filed by the New Jersey Public Advocate ("NJPA").¹ NJPA asks the Commission to vacate the limited waiver of Section 61.42(g) of the Commission's rules granted to AT&T by the Wireline Bureau ("Bureau") on June 6, 2007, to allow AT&T to exclude its True IP to PSTN service ("TIPToP") from price cap regulation in the 2007 annual access tariff filing. As AT&T demonstrates herein, the Bureau properly found that good cause existed to grant the limited waiver and, accordingly, the Commission should affirm the Bureau's decision.

BACKGROUND

In its Petition for Waiver,² AT&T demonstrated that special circumstances exist warranting the grant of a limited waiver of Section 61.42(g) for its TIPToP service.³

¹ Application for Review filed by the New Jersey Public Advocate, Division of Rate Counsel, WCB/Pricing File No. 07-08, DA 07-2043 (June 6, 2007).

² AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules and Request for Expedited Treatment, WCB/Pricing File No. 07-08 (filed March 12, 2007) (Petition for Waiver).

³ TIPToP provides Internet Protocol Voice Information Service Providers (IP-VIS Providers) with connectivity between the IP-VIS provider's (TIPToP customer's) network and the AT&T network. This service is provided through one-way or two-way port interfaces that provide trunking and switching components in a single easy to use time division multiplexed interface for the customer. With this simplified interface, the TIPToP customer gets trunking, switching and routing connectivity to AT&T users or non-AT&T users that are connected through (subtended by) AT&T Access Tandems.

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Specifically, AT&T explained that TIPToP does not fit squarely into the existing price cap structure because it contains multiple elements of the trunking and traffic sensitive price cap baskets.⁴ Further, given the intricacies of the service, it would not be feasible to develop an allocation method between the baskets for the service.⁵ Thus, until the Commission provides further guidance regarding the appropriate treatment of such hybrid services under price caps, AT&T requested that it be permitted to exclude TIPToP from price cap regulation.

Importantly, AT&T demonstrated that grant of its limited waiver request would not contravene the public interest.⁶ Because TIPToP is excluded from price cap regulation, AT&T is required to file any rate increases to TIPToP or changes to its terms or conditions on 15-days notice with cost support.⁷ TIPToP accordingly would remain subject to significant regulatory oversight by the Bureau.

The Bureau agreed with AT&T's arguments and, exercising its delegated authority, granted AT&T's limited waiver request,⁸ finding that there was good cause to do so.⁹ The Bureau agreed with AT&T that, as a hybrid service, TIPToP does not fit into the existing price cap regime, thus maintenance of the status quo was warranted until the

⁴ Petition for Waiver, at 3.

⁵ *Id.*

⁶ See Reply Comments of AT&T Inc., WCB Pricing File No. 07-08, at 2-3.

⁷ *Id.*

⁸ AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules, Order, WCB/Pricing File No. 07-08, (rel. May 10, 2007) (Bureau Order).

⁹ As the Bureau correctly described, under existing federal law, the Commission can waive its regulations for good cause. See *Northeast Cellular Telephone Co., v. FCC*, 897 F.2d 1164, 1166 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

Commission determines the appropriate regulatory treatment for TIPToP.¹⁰ The Bureau also determined that grant of the limited waiver request would serve the public interest because it would allow the Commission to address the appropriate regulatory treatment of all IP-originated traffic in the pending IP-Enabled Services and Intercarrier Compensation Reform proceedings prior to resolving more detailed issues, such as how transmission services designed for IP-originated traffic should be treated under price cap regulation.¹¹ Notably, the Bureau expressly rejected claims raised by NJPA that the Bureau did not have authority to grant the waiver.¹² Grant of the waiver, according to the Bureau, would not resolve any new or novel price cap issues, such as the appropriate price cap basket for TIPToP or other hybrid services. Rather, it would exclude the service from price cap regulation for a limited period (i.e., the July 2007 to June 2008 tariff period) to allow the Commission to address such issues.¹³

Additionally, the Bureau concluded that it would continue to have regulatory oversight over TIPToP pursuant to the Part 61 rules.¹⁴ According to the Bureau, such oversight would give the Bureau sufficient opportunity to address any alleged attempt by AT&T to engage in discriminatory or anti-competitive pricing behavior, and any other concerns raised by NJPA.¹⁵

¹⁰ *Bureau Order*, at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

NJPA filed its Application for Review of the Bureau's limited waiver grant, arguing that the Bureau exceeded its authority in granting the waiver, that AT&T failed to submit empirical data to support its request, that AT&T failed to submit any evidence of good cause, and that the Bureau's decision was not reasoned.¹⁶

DISCUSSION

NJPA's arguments are meritless. There was good cause to support AT&T's waiver and the Bureau acted properly in granting AT&T's request.¹⁷

First, the Bureau has delegated authority to waive Commission rules upon a showing of good cause.¹⁸ Indeed, the Bureau has waived section 61.42(g) of the price cap rules numerous times for AT&T and other providers.¹⁹ Moreover, the fact that this is

¹⁶ Application for Review, at 2.

¹⁷ As an initial matter, NJPA has failed to offer any rational explanation as to why it is challenging the waiver granted to AT&T for TIPToP in the first place. According to its website, NJPA "is a principal executive department of the state dedicated to making government more accountable and more responsive to the needs of average New Jerseyans." See <http://www.state.nj.us/publicadvocate/about/>. AT&T, however, does not offer TIPToP in the state of New Jersey.

¹⁸ See 47 C.F.R. §§ 0.91(b), 1.3. See also *Northeast Cellular Telephone Co., v. FCC*, 897 F.2d 1164, 1166 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹⁹ Verizon Petition for Interim Waiver of Section 61.42(g), 61.38 and 61.49 of the Commission's Rules, WCB Pricing No. 02-16, Order, 17 FCC Rcd 11010 (2002); Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules, WCB Pricing No. 03-11, Order, 18 FCC Rcd 6498 (2003); Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB Pricing File No. 04-16, Order, 19 FCC Rcd 7095 (2004); Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB Pricing File No. 05-17, Order, 20 FCC Rcd 8900 (2005); Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB Pricing File No. 06-10, Order, 21 FCC Rcd 6470 (2006); Hawaiian Telecom Inc. Petition for Waiver of a Section 61.42(g) of the Commission's Price Cap Rules for Advanced Services Formerly Offered by Verizon Hawaii, Inc., WCB Pricing File No. 07-12, Order, 22 FCC Rcd 10254 (2007); Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB Pricing File No. 07-31, Order, 22 FCC Rcd 10259 (2007). In these successive orders, the Bureau granted Verizon limited waivers of Section 61.42(g) to keep its advanced services out of price cap regulation.

the third limited waiver of Section 61.42(g) granted to AT&T for TIPToP does not render the Bureau's decision excessive, arbitrary or capricious. The Commission has, since March 2004, been considering the regulatory treatment of IP-enabled services as well as overarching intercarrier compensation issues. Resolution of these thorny issues could impact TIPToP and other similar services, including their regulatory treatment under the price cap regime. Consequently, the *most reasoned* approach here was for the Bureau to grant AT&T's request to exclude TIPToP from price cap regulation, even if successive, so that the *Commission*, not the Bureau, can resolve these issues.

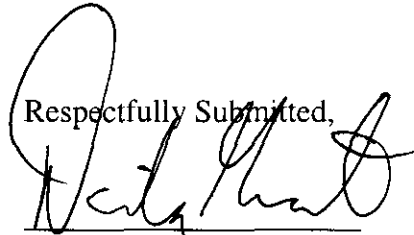
Second, there was sufficient evidentiary support in the record to justify the waiver. As AT&T's filed tariffs make clear, TIPToP has both trunking and traffic sensitive elements, and the associated rates set forth in the tariff clearly fall within two separate price cap baskets.²⁰ Aside from explaining TIPToP's tariff structure in relation to the Commission's existing price cap rules — as AT&T did in its waiver petition — there was simply no need for additional “evidentiary” support for AT&T's waiver request. NJPA's unsupported claims to the contrary are baseless.

Third, as the Bureau demonstrated, it will continue to regulate TIPToP pursuant to the Part 61 rules during the limited duration of the waiver. Accordingly, NJPA's speculative concerns about AT&T having the opportunity to engage in purported anticompetitive pricing behavior with respect to this service are entirely unfounded.

²⁰ See, e.g., Pacific Bell Telephone Company, FCC Tariff No. 1, Sec. 36.2(a)(1-2). These sections describe the trunking rate elements and traffic sensitive (distance sensitive) rate elements.

CONCLUSION

Given the foregoing, the Bureau was well within its authority to grant AT&T the requested limited waiver and such grant was based on a substantial showing of good cause in accordance with the Commission's rules. The Commission, accordingly, should affirm the Bureau's waiver and deny NJPA's application for review.

Respectfully Submitted,


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